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Agenda Item 6.0

### Memorandum

To: Wastewater Committee

DATE: March 2, 2011

SUBJECT: Timeline of events related to Illinois EPA's position on FPA boundary

amendments

The Illinois Environmental Protection Agency (IEPA) recently announced it will no longer deny a State construction permit based solely on a project not being consistent with an FPA boundary. As their position becomes better known throughout the state, it is probable that CMAP would see fewer amendment applications for sewer service extensions into another established FPA.

To date, correspondence has been exchanged between CMAP and the IEPA and several discussions have occurred to the matter of Illinois EPA's change in thinking regarding the FPA review process. A chorological timeline of these events is as follows:

#### March/April 2010

Illinois EPA Bureau of Water (BOW) informed CMAP via phone that they intended to change their position regarding FPA boundary amendments. With the potential for legal action against the Agency, IEPA's lawyers concluded that they did not have legal standing to deny a permit based upon a FPA boundary issue. Instead, IEPA stated they would be actively pursuing a watershed based approach to wastewater planning.

#### May 2010

CMAP transmitted a letter (See Attachment A) to IEPA expressing its concerns about the revisions to the FPA process in northeastern Illinois. The letter requested guidance on the legal and administrative steps that IEPA intends to follow to disband the FPA process, and what additional steps will be taken to pursue a smooth transition from the FPA process to a watershed based process. CMAP also noted that this change could also have an impact on the role and function of the legislatively created Wastewater Committee.

IEPA responded (See Attachment B) to CMAP's letter restating its intended changes to the FPA / permitting process. It stated that CMAP will continue to perform consistency reviews of NPDES permits and facility plans and that it could continue to perform consistency review for FPA amendments under the current agreement. IEPA stated the scope of work contained in the contract IEPA has with CMAP may be modified to add additional activities such as the development of watershed-based plans. The resolution of other issues implementing the revised policy has yet to be determined.

July 29, 2010

CMAP and IEPA conduct a conference call. IEPA makes clear that they view Wastewater Treatment Plant service areas as important, but not FPA boundaries. IEPA acknowledges that the Illinois Department of Agriculture is concerned about how IEPA's new position might affect farmland conversion. IEPA indicates that it intends to or has been 'conducting outreach' to wastewater agencies, area-wide agencies, and homebuilders.

August 26, 2010

Another conference call is conducted between CMAP and IEPA.

September 2, 2010

IEPA, Bureau of Water testified at the Annual Hearing before the Illinois Pollution Control Board (See Attachment C). Testimony included a summary of the change in policy regarding the consideration of FPA boundaries when issuing permits. The IEPA also stated that it could continue to meet requirements under Section 208 of the Clean Water Act through other State programs they administer.

November 29, 2010

The Executive Director of the Barrington Area Council of Government (BACOG) along with six elected officials from BACOG request to meet with CMAP to express their opposition to IEPA's new FPA-policy position. BACOG representatives indicate that IEPA's position undermines their pursuit of local planning on such issues as sewering, land use, and environmental protection.

## February 2011

IEPA begins to issue letters to entities with pending FPA boundary change amendments explaining the new policy (See Attachment D). Recipients are asked to notify IEPA if they would still like the Illinois EPA to make a decision concerning the proposed FPA amendment, given that FPA boundaries no long hinder an applicant's ability to secure a sewer extension permit.

# February 10, 2011

CMAP reviews relevant state and federal legislation and the language of the Illinois Water Quality Management Plan and comes to the conclusion that there is sufficient legal authority for IEPA to consider FPA boundaries when issuing a permit for sewer extensions. CMAP transmits its understanding of the law to IEPA (See Attachment E) and requests further discussion.